

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7747 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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BHARAT @ DHIRUBHAI BALABHAI PARMAR

Versus

DISTRICT MAGISTRATE

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Appearance:

MS DR KACHHAVAH for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/12/1999

#### ORAL JUDGEMENT

The petitioner came to be detained under the provisions of Prohibition of Anti-Social Activities Act (PASA for short) by virtue of an order passed by the District Magistrate, Bhavnagar, District - Bhavnagar on 24.2.99 in exercise of powers under Section 3(1) of the PASA Act.

2. The grounds of detention dated 24.2.99 indicate that Detaining Authority took into consideration the 3

offences registered against the petitioner under the various sections of IPC as well as the Bombay Police Act. The cases are shown to be pending for trial. The Detaining Authority also took into consideration the statements of 3 witnesses whose identity has not been disclosed and after verifying the statements, recorded a subjective satisfaction that the facts stated in the statements and the fear expressed by the witness qua the petitioner are correct and genuine. The Detaining Authority therefore concluded that the petitioner is required to be prevented immediately from pursuing his illegal and antisocial activities. The Authority observed that resorting to alternative less drastic remedy may not yield the results of immediately preventing the petitioner pursuing his illegal and antisocial activities and therefore it is necessary to detain him under the provisions of PASA Act as he is found to be a dangerous person as defined under Section 2(c) of the PASA Act.

3. The petitioner in this petition under Article 226 of the Constitution of India challenges the order of detention on various counts, the main ground being that certain relevant documents though demanded by the petitioner in a representation have not been supplied by the authorities concerned. This resulted into infringement of the right of the petitioner of making an effective representation guaranteed by the Constitution of India. The order is therefore bad and the petitioner may therefore be ordered to be released. Another ground that is taken is that the verification by the Detaining Authority is only one word verification which is not proper. The subjective satisfaction cannot be said to be properly arrived at and therefore also the order of detention is bad. Last contention that is raised is that copies of CR No. 11/97 of the same Police Station though demanded has not been supplied to the petitioner nor has it been placed before the Detaining Authority for consideration and therefore also the order is bad.

4. Ms.Kachva, Ld. Advocate appearing for the petitioner has restricted her arguments to the above grounds only. She submitted that a representation was made to the Chief Minister as well as the Detaining Authority on 15.9.99 and in the representation made to the Detaining Authority request was made that certain documents which are in English language/script may be supplied in Gujarati language as English language/script is not understood by the petitioner/detenu. The medical certificates in respect of Cr.No. 54/97 and 619/88 were also requested to be supplied so that the petitioner may

make an effective representation. The documents have not been supplied to the petitioner as has been contended in the petition & therefore this is denial of a constitutional right of making an effective representation and the petition deserves to be allowed only on this count. She submitted further that copies of CR.No. 11/97 are not supplied. This FIR was lodged by brother of detenu against a Police Personnel and the copy of it was necessary to enable the petitioner to put forward his case of malafide action. The same having not been supplied, has affected the interest of the petitioner. As regards one word verification she submitted that this is a clear non-application of mind as the subjective satisfaction cannot be justly said to have been arrived at.

5. Mr.Joshi, Id. AGP appearing for the respondents submitted that the representation dated 15.9.99 was received by the Detaining Authority on 17.9.1999 and the same was forwarded to the Government for consideration. The Government in turn by letter dated 4.10.99 instructed the District Magistrate, Bhavnagar (Detaining Authority) to supply the documents demanded by the petitioner/detenu. On being asked pointedly Mr.Joshi could not positively say that documents have been supplied.

6. The petition deserves to be allowed only on this count. The petitioner has come with a specific case of non-supply of relevant documents. The documents were considered necessary to be supplied by the Government as the Government has instructed the District Magistrate to supply the same to the detenu. The Detaining Authority has not filed any reply by way of affidavit or otherwise. There is nothing on record to indicate that these documents have been supplied to the detenu as against the petitioner making an averment on oath that the documents have not been supplied. In this view of the matter this non-supply of documents has resulted into denying the petitioner/detenu the right of making an effective representation which is guaranteed by the Constitution of India Article 22(5).

7. The order of detention of the petitioner would therefore be rendered vitiated. The detention order therefore deserves to be quashed and set aside on this ground alone.

8. Ms.Kachva at this stage does not press for other grounds advanced by her during the course of the arguments.

9. In this view of the matter, the petition deserves to be allowed and the same is allowed. The petitioner Bharat @ Dhirubhai Balabhai Parmar be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. No costs.

(A.L.Dave, J)

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